

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

KENIKKA LEMONS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-23-600-SLP
)	
PORTFOLIO RECOVERY ASSOCIATES,)	
LLC,)	
)	
Defendant.)	

ORDER

Before the Court is Plaintiff’s Request to File Out of Time Appeal [Doc. No. 53]. Defendant has filed its Response in Opposition [Doc. No. 55]. Therefore, the matter is at issue.¹ For the reasons that follow, Plaintiff’s Request is DENIED.

I. Background

On July 29, 2024, this Court entered its Order and Judgment [Doc. Nos. 40 and 41] granting summary judgment in favor of Defendant. On August 30, 2024, Plaintiff untimely filed a Notice of Appeal [Doc. No. 46]. *See* 28 U.S.C. § 2107(a) (requiring notice of appeal to be filed within thirty days of entry of judgment); *see also* Fed. R. App. P. 4(a)(1).

In the Notice of Appeal, Plaintiff incorrectly stated that “the final judgment” was “entered in this action on August 30, 2024[.]” *Id.* Before the Tenth Circuit, on September 11, 2024, Defendant filed a Motion to Dismiss Appeal. *See Lemons v. Portfolio Recovery*

¹ Plaintiff did not file a Reply and the time for doing so has expired. *See* LCvR 7.1(h).

Assocs., LLC, Case No. 24-6179 (10th Cir.), Mot. [Doc. No. 10].² Defendant seeks dismissal based on the untimeliness of the appeal. *See id.*

On September 11, 2024, the Tenth Circuit directed Plaintiff to file a response to Defendant’s motion. *See id.*, Order [Doc. No. 13]. The Tenth Circuit noted that the notice of appeal “was due by August 28, 2024” and that Plaintiff had “not filed in the district court a motion for extension of time to appeal.” *Id.* The Tenth Circuit suspended briefing on the merits pending further order of the court. *Id.*

On September 17, 2024, Plaintiff filed a Response to Defendant’s Motion to Dismiss. *See id.*, Resp. [Doc. No. 14].³ Also on September 17, 2024, Plaintiff filed a Motion to Docket Appeal Out of Time. *Id.*, Mot. [Doc. No. 15]. On September 18, 2024, the Tenth Circuit abated the appeal pending this Court’s ruling on Plaintiff’s Request to File Appeal Out of Time. *See id.*, Order [Doc. No. 17].

In addition to her filings before the Tenth Circuit on September 17, 2024, Plaintiff also filed her pending Motion with this Court. The Motion has been filed within the thirty-day period permitted for seeking an appeal out of time. *See* 28 U.S.C. § 2107(c) (“The district court may, upon motion filed *not later than 30 days after the expiration of the time otherwise set for bringing appeal*, extend the time for appeal upon a showing of excusable neglect or good cause.” (emphasis added)); *see also* Fed. R. App. P. 4(a)(5)(A)(i)-(ii).


² To avoid confusion, the Court refers to the parties as “Plaintiff” and “Defendant” when addressing the appellate record even though Plaintiff is the “Appellant” and Defendant is the “Appellee.”

³ Plaintiff filed the pending Request before this Court on the same date.

Plaintiff's Request to file an out-of-time appeal is based on nearly identical filings as those presented in a related case, *Brewer v. Portfolio Recovery Associates*, Case No. CIV-23-636-SLP (W.D. Okla). In *Brewer*, the Court has fully addressed those filings and Plaintiff's request for leave to file an appeal out of time in reliance on the same facts as those at issue here. The Court has denied the requested relief. Because the filings, procedural posture, argument and factual record are virtually identical in both cases, the Court adopts and incorporates herein the analysis set forth in *Brewer*. *See id.*, Order [Doc. No. 51].

IT IS THEREFORE ORDERED that Plaintiff's Request to File Out of Time Appeal [Doc. No. 53] is DENIED.

IT IS SO ORDERED this 1st day of October, 2024.



SCOTT L. PALK
UNITED STATES DISTRICT JUDGE